



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 110 and 165

[Docket Number USCG-2013-1014]

RIN 1625-AA00

Anchorage Grounds and Safety Zone, Delaware River; Marcus Hook, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary regulations in support of the annual U.S. Army Corps of Engineers (USACE) dredging of Marcus Hook Range in the Delaware River. Anchorage restrictions and a safety zone affecting the Marcus hook area of the Delaware River are in place every year from September 1 through December 31. The dredging operations taking place this year require the regulations to remain in place through February 28, 2014. This final rule establishes temporary regulations to extend the time that those regulations are in place.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until February 28, 2014. For the purposes of enforcement, actual notice will be

used from the date the rule was signed, December 30, 2013, until
[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of
docket number [USCG-2013-1014]. To view documents mentioned in
this preamble as being available in the docket, go to
<http://www.regulations.gov>, type the docket number in the
"SEARCH" box and click "SEARCH." Click on Open Docket Folder on
the line associated with this rulemaking. You may also visit the
Docket Management Facility in Room W12-140 on the ground floor of
the Department of Transportation West Building, 1200 New Jersey
Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m.,
Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this
rule, call or e-mail Lieutenant Veronica Smith, Chief Waterways
Management, Sector Delaware Bay, U.S. Coast Guard; telephone
(215) 271-4851, email veronica.l.smith@uscg.mil. If you have
questions on viewing or submitting material to the docket, call
Cheryl Collins, Program Manager, Docket Operations, telephone
(202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

| | |
|------|---------------------------------|
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of Proposed Rulemaking |

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and unnecessary. Immediate action is necessary to provide for the safety of life and property in the navigable water. Publishing an NPRM is impracticable because the final details for the dredging operation were not received by the Coast Guard until December 02, 2013 and there was insufficient time to allow for a comment period. Publishing an NPRM is unnecessary because very few members of the public will be affected by the regulations established by this Final Rule. The regulations being created are temporary and will only impact a small number of vessels in a limited geographic area. Failure to establish these regulations may present hazards to vessels transiting or attempting to transit Marcus Hook Range and the adjacent anchorage during pipe-

laying or dredging operations. Delaying this rule to wait for a notice and comment period to run would be contrary to the public interest as it would inhibit the Coast Guard's ability to protect the public from the hazards associated with pipe-laying and dredging operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds for the same reasons described in the previous paragraph that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

B. Basis and Purpose

On July 15, 2005, the Coast Guard published a final rule entitled "Anchorage Grounds and Safety Zone; Delaware River" in the Federal Register (70 FR 40885). This rule established regulations for the annual dredging operations that take place in the Marcus Hook Range from September 1 through December 31. To reduce the hazards associated with the dredging operations, vessel traffic that normally transits through the Marcus Hook Range is diverted through part of Anchorage 7 during dredging operations. As a result, the rule places additional requirements and restrictions on the use of Anchorage 7 and Anchorage 6. In addition, a permanent safety zone was placed in waters within a 150 yard radius around vessels engaged in dredging operations. Norfolk Dredging Company has been hired by the Army Corps of Engineers to conduct the annual dredging in Marcus Hook Range.

This year, dredging operations began on December 10, 2013, which is later in the year than previous dredging operations. This has made it necessary to extend the effective period of the existing regulations to ensure the safety of mariners transiting the area from the potential hazards associated with pipe laying and dredging operations.

C. Discussion of the Temporary Final Rule

The Captain of the Port Sector Delaware Bay is extending the effective period of the regulations found in 33 CFR 165.555 and 33 CFR 110.157 for the duration of the dredging operation in Marcus Hook Range. These regulations will be in effect until February 28, 2014, unless cancelled earlier by the Captain of the Port. The safety zone being established will include waters within a 150 yard radius of the dredge performing the dredging operations. Vessels transiting the Marcus Hook Range will have to divert from the main ship channel through Anchorage 7 and must operate at the minimum safe speed necessary to maintain steerage and reduce wake. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Delaware Bay, or her on-scene representative. Certain requirements will also be in place for vessels using the affected anchorages. During the effective period, vessels desiring to use Marcus Hook Anchorage (Anchorage 7), must obtain permission from the Captain of the Port Sector Delaware Bay at

least 24 hours in advance. The Captain of the Port will permit only one vessel at a time to anchor in Anchorage 7 and will grant permission on a "first come, first served" basis. That vessel will be directed to a location within Anchorage 7 where it may anchor for a period not to exceed 12 hours. Vessels normally permitted to anchor in Anchorage 7 will be expected to use the next closest anchorage grounds, Anchorage 6 off Deepwater Point or Anchorage 9 near the entrance to Mantua Creek. To control access to Anchorages 6 and 9, the Coast Guard requires that any vessel 700 feet or greater in length to obtain advance notice from the Captain of the Port before anchoring. Any vessel 700 to 750 feet in length is required to have one tug standing alongside while at anchor and any vessel over 750 feet in length will require two tugs standing alongside. Any tug being utilized for this purpose must have sufficient horsepower to assist with necessary maneuvers to keep the vessel clear of the navigational channel. The Captain of the Port, Sector Delaware Bay, or her on-scene representative may be contacted via VHF channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under

section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard does not anticipate any significant economic impact because the safety zone will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic since vessels will be able to pass through Anchorage 7. During the enforcement period, vessels may request permission to transit through the safety zone. Permission may be granted by the Captain of the Port on a case-by-case basis. The operator of any vessel in the safety zone shall proceed as directed by the designated representative of the Captain of the Port and shall contact the Dredge ESSEX on VHF channel 13 or 16 at least 30 minutes prior to arrival for passing information.

Although this regulation requires certain vessels to have one or two tugs alongside while at anchor, the requirement only applies to vessels 700 feet or greater in length that choose to anchor in Anchorages 6 and 9. Alternate anchorage grounds such as Anchorage A off the entrance to the Mispillion River and Anchorage 1 (Bombay Hook) off Bombay Hook Point in Delaware Bay,

are reasonably close and generally available.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities:

(1) This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate, transit, or anchor in Anchorage 7 from January 1, 2014 until February 28, 2014 unless cancelled earlier by the Captain of the Port.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will only be enforced for a short period of time. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Delaware Bay, to transit through the safety zone. Before activation of the zone, we will give

notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves anchorages and safety zones on the navigable waters of the United States under 33 CFR Parts 110 and 165.. This zone will temporarily restrict vessel traffic from transiting through a portion of Marcus Hook Range in order to protect the safety of life and property on the waters while submerged dredge pipe-laying and dredging operations are conducted. This rule is categorically excluded from further review under paragraphs 34(f) and 34(g) of Figure 2-1 of the Commandant Instruction. A checklist and categorical exclusion determination are available

in the docket. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects

33 CFR Part 110

Anchorage Grounds

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 110 and 165 as follows:

PART 110 - ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C 471; 1221 through 1236, 2030, 2035, and 2071; Department of Homeland Security Delegation No. 0170.1 and 33 CFR 1.05-1(g)

2. Add temporary paragraph (b) (12) to § 110.157 to read as follows:

§ 110.157 Delaware Bay and River.

* * * * *

(b) * * *

(12) From January 1, 2014 until February 28, 2014, additional requirements and restrictions in this paragraph for

the use of anchorages defined in paragraphs (a)(7), (a)(8), and (a)(10) of this section apply.

(i) Before anchoring in Anchorage 7 off Marcus Hook, as described in paragraph (a)(8) of this section, a vessel must first obtain permission from the Captain of the Port, Philadelphia, at least 24 hours in advance of arrival. Permission to anchor will be granted on a "first-come, first-served" basis. The Fifth Coast Guard District Commander will allow only one vessel at a time to be at anchor in Anchorage 7, and no vessel may remain within Anchorage 7 for more than 12 hours. Any vessel arriving from or departing to sea that requires an examination by the public health service, customs or immigration authorities will be directed to an anchorage for the required inspection by the Captain of the Port on a case-by-case basis.

(ii) For Anchorage 6 off Deepwater Point, as described in paragraph (a)(7) of this section, and Anchorage 9 as described in paragraph (a)(10) of this section.

(A) Any vessel 700 feet or greater in length requesting anchorage shall obtain permission from the Captain of the Port, Philadelphia, Pennsylvania, at least 24 hours in advance.

(B) Any vessel from 700 to 750 feet in length shall have one tug alongside at all times while the vessel is at anchor.

(C) Any vessel greater than 750 feet in length shall have two tugs alongside at all times while the vessel is at anchor.

(D) The Master, owner or operator of a vessel at anchor shall ensure that any tug required by this section is of sufficient horsepower to assist with necessary maneuvers to keep the vessel clear of the navigation channel.

(iii) As used in this section, Captain of the Port means the Commander of Sector Delaware Bay or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf. The Captain of the Port may be contacted by telephone at (215) 271-4807 or via VHF marine band radio, channel 16.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

3. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

4. Add temporary § 165.T05-1014, to read as follows:

§ 165.T05-1014 Safety Zone, Delaware River

(a) Regulated Area. The following area is a safety zone: All

waters located within a 150 yard radius around the dredging operation and barge, conducting dredging operations in or near the vicinity of Anchorage 7.

(b) Regulations. The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this section, § 165.T05-1014.

(1) All persons and vessels are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port or her designated representative.

(2) All persons or vessels wishing to transit through the safety zone must request authorization to do so from the Captain of the Port or her designated representative one hour prior to the intended time of transit.

(3) Vessels granted permission to transit through the Safety Zone must do so in accordance with the directions provided by the Captain of the Port or her designated representative.

(4) To seek permission to transit this safety zone, the Captain of the Port or her designated representative can be contacted via Sector Delaware Bay Command Center (215) 271-4940 or VHF channel 16. Vessels should contact the Dredge ESSEX on VHF channel 13 or 16 at least 30 minutes prior to arrival for passing information.

(5) This section applies to all vessels wishing to transit through the safety zone except vessels that are engaged in the

following operations:

- (i) Enforcing laws;
- (ii) Servicing aids to navigation, and
- (iii) Emergency response vessels.

(6) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(7) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;

(8) No person may board, or take or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port; and

(9) No person may take or place any article or thing upon any waterfront facility in a safety zone without the permission of the Captain of the Port.

(c) Definitions.

(1) Captain of the Port means the Commander, Coast Guard Sector Delaware Bay, or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on her behalf.

(2) Designated representative means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) Enforcement. The U.S. Coast Guard may be assisted by

Federal, State, and local agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This section will be enforced from January 1, 2014 until February 28, 2014 unless cancelled earlier by the Captain of the Port.

Dated: December 30, 2013

STEVEN H. RATTI
Rear Admiral, U.S. Coast Guard
Commander, Fifth Coast Guard District

[FR Doc. 2014-00438 Filed 01/13/2014 at 8:45 am; Publication

Date: 01/14/2014]